IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 32420 of 2007(H)

PETITIONER:

M/S. V.A.TECH WABAG LTD,
AT THE SITE OF TRAVANCORE TITANIUM PRODUCTS
KOCHUVELI, THIRUVANANTHAPURAM
HAVING ITS REGD OFFICE AT NO.2 MURRAYS GATE ROAD
ALWARPET, CHENNAI, REPRESENTED BY ITS SENIOR
COMMERCIAL MANAGER, SRI. ARUN NAIR.

BY ADV. SRI.A.KUMAR

RESPONDENTS:

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1. THE DY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, THIRUVANANTHAPURAM.

2. THE INTELLIGENCE OFFICER,
SQUAD NO.11, DEPARTMENT OF COMMERCIAL TAXES
THIRUVANANTHAPURAM.

3. THE CHIEF ENGINEER, JBIC PORJECT
KERALA WATER WORKS
WATER WORKS CAMPUS
VELLAYAMBALAM,. THIRUVANANTHAPURAM.

BY GOVT. PLEADER MR. K.P. PRADEEP.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 32420 OF 2007 H
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Dated this the 7th November, 2007

J U D G M E N T

The prayer in this writ petition is to quash Exts. P3 and P4 and to direct the 1st respondent to consider Ext. P2 appeal without insisting on any pre-deposit or security.

2. It is stated that goods belonged to the petitioner were detained by the 2nd respondent and were released on furnishing security. In the proceedings for adjudication, the security deposit was converted into penalty and against the said order Ext. P2 appeal was filed with an application for stay. Considering the petition for stay, the appellate authority passed Ext. P3 order granting stay on condition that the petitioner remits 50% of the disputed tax and furnishing adequate security for the balance amount. Thereafter, the 2nd respondent issued Ext. P4 and it is in these circumstances this writ petition has been filed seeking the reliefs mentioned above.

3. The learned counsel for the petitioner submits that in Ext. P3 there has not been any consideration of the case at all. It is submitted that since Ext. P3 reflects non-application of mind and failure to advert to the contentions raised, the order is liable to be set aside and the appellate authority should be directed to consider the appeal without insisting on any pre-deposit.

4. In support of the contentions, the learned counsel would argue that the findings in Ext. P1 that the transaction is not an interstate sale or a sale in transit and that the petitioner's contention that the transactions are under Section 6(2) of the CST Act are untenable. Petitioner disputes its liability to pay tax referring to the contract it had entered into and the scope of work incorporated in the said contract. According to the petitioner, the contract is a divisible one for supply and the other for erection, installation and commissioning and that the prices for each part are specified separately. It is submitted that based on the contract, they got certain goods manufactured at Chennai and as such it is a direct sale

between the manufacturer and the awarder of the contract, namely, M/s. TTPL, Trivandrum. It is on that basis the petitioner contends that it is a direct interstate sale between the manufacturer and the end-user. It is further contended that even if the transaction is not taken as an interstate sale, but is a works contract, even then the transaction is not liable for tax under the KVAT Act.

5. However, the petitioner is reiterated its contentions in the appeal memorandum and places reliance on the decisions reported in ***C.T. Ltd. v. Commercial Tax Officer*** {(1997)104 STC 94 (SC)}, ***Siemens Ltd. v. State of Kerala*** {(2001) 122 STC 1} and ***Larsen & Toubro Limited v. Commissioner of Commercial Taxes*** {(2003(132) STC 272}. A reading of Ext. P1 order of the 2nd respondent would show that these contentions raised by the petitioner have been overruled by the said authority.

6. In my view when the correctness or otherwise of Ext. P3 conditional order of stay is examined, the issue that arises for consideration is whether the petitioner has made out a prima facie case for a stay.

In so far as this aspect of the matter is concerned, the appellate authority has rightly concluded that the petitioner has made out a prima facie case for conditional stay. Petitioner has not argued before me a case of financial hardship. It is considering this case the appellate authority in its discretion has granted stay on condition that the petitioner remits 50%. The contentions raised by the petitioner are essentially matters which are to be examined when the appeal is disposed of and I cannot be called upon to examine the same, at least at this stage.

7. Having examined the case in its totality I see no perversity in the order passed by the appellate authority warranting interference. However, in view of the pendency of this writ petition I direct that time for compliance of Ext. P3 will stand extended by 2 weeks from today.

8. Petitioner submits that the 3rd respondent is retaining amounts that are due to it in view of Ext. P4. It is clarified that if the 3rd respondent is retaining any amount due to the petitioner in excess of what is indicated in Ext. P4, retaining the said

amount, it will be free to consider any request made by the petitioner for releasing the balance amount.

Subject to the above the writ petition is dismissed.

ANTONY DOMINIC
JUDGE

jan/-